HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.NO. 22854 OF 2007

DATED: 30.10.2007

Between:

M. Srinivasa Rao

… Petitioner

and

The Secretary, Regional Transport
Authority, Ongole and another

… Respondents

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.NO. 22854 OF 2007

ORAL ORDER:

This writ petition is filed for a writ of Mandamus to declare the seizure of the petitioner's vehicle bearing Registration No.AP/27V-9240 under the Vehicle Check Report No.0604566 dated 7.10.2007 of the respondent No.2, as illegal and arbitrary.

The contract carriage vehicle of the petitioner bearing the above said registration number covered by a Maxi Cab permit was seized on 7.10.2007. A check report was prepared on the same day and paragraph (6) thereto reads as under:

> **"Irregularities noticed: Stopped and checked the above cited vehicle while coming from Ongole to Hyderabad with 16 + 1 = 17 in all passengers and found the following. On my enquiry with the passengers it revealed that the passengers are not one party. They are traveling their own purposes by paying their individual fares and there is no contractor in the bus. There is no contract between owner and passengers. The fares are Ongole to Hyderabad Rs.200/- each – 10 passengers, Ibrahimpatnam to Hyderabad Rs.20/- each – 6 passengers. Hence it is plying as express stage carriage between Ongole to Hyderabad violating the permit conditions. The passengers are get down different places at Biramalguda, L.B. Nagar and Lakdikapool. The vehicle having fixed 4 extra seats as shown in the figure. It is unauthorized alteration of seats and liable to pay extra tax to seats and penalty. Hence seized the vehicle under Section 207 of M.V. Act and U/s 8 of A.P.M.V.T Act and kept at Nagole Driving Test Track."**

The present writ petition is filed questioning the seizure of the said vehicle of the petitioner. The learned Assistant Government Pleader for Transport contended that under Rule 448 (B) of the A.P. Motor Vehicles Rules, 1989 (for short 'the Rules'), an application for release of a vehicle seized and detained under sub-section (1) of Section 207 will lie and the Secretary, Regional Transport Authority shall entertain the application for release of the vehicle seized and detained by subordinate officer. The learned Assistant Government Pleader, therefore, submitted that this procedure provided for by the statute is bypassed by the petitioner and the writ petition is, therefore, not maintainable.

Sri B. Siva Rama Krishnaiah, learned counsel for the petitioner, however, submits that though the petitioner attempted to make an application, the same was not entertained.

A perusal of the affidavit filed in support of the writ petition does not contain any averment to this effect. This contention, therefore, cannot be countenanced.

A statutory duty is cast upon the Secretary, Regional Transport Authority to entertain the application; consider and dispose of the same in accordance with law. Therefore, no option is left with the Secretary, Regional Transport Authority except to entertain the application and it is his bounden duty to entertain and dispose of the same.

The learned counsel for the petitioner relied upon **SALEEM TOURS AND TRAVELS V. JOINT TRANSPORT COMMISSIONER**

AND SECRETARY, RTA (1) and stated that since tax is not determined so far, it is not open to the respondents to detain the vehicle on the purported ground that the petitioner will be liable to pay tax in future. In particular, he relied upon para 17 (3) of the judgment, which reads as under:

> **"The vehicle seized under Section 207 on the ground of contravention of conditions of permit should not be detained for unduly long time and on application filed by the vehicle operator, the vehicle ought to be released with expedition subject to stipulation of conditions to ensure non-alienation of the vehicle and the production of vehicle in connection with the enquiry unless there are exceptional circumstances which make the release of vehicle frustrate the enquiry. Such conditions may include furnishing of cash security of a reasonable amount which could be adjusted later on towards compounding fee or tax if any demanded. Incidentally, it may be mentioned that this Court while directing release of vehicles, has been directing deposit ranging between Rs.2,000/- to Rs.5,000/-."**

There cannot be any dispute about the ratio laid down by the Division Bench in the above-mentioned case. If the respondent does not follow the said ratio on the application to be filed by the petitioner for release of his vehicle, he will be at liberty to question the order of the respondent on the ground of violation of the principles laid down by this court. Since this writ petition, in my considered view, is premature, I refrain from going into this issue at this stage.

The writ petition is therefore disposed of with a direction to the respondent to entertain the application, if filed by the petitioner, and dispose it of in accordance with law, within a period of two days from the date of receipt of the application filed by the petitioner for release of the vehicle. There shall be no order as to costs.

C.V. NAGARJUNA REDDY, J

Date: 30.10.2007

NOTE: CC BY TOMORROW.
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